

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 11-06222 AHM (PLA)	Date	October 26, 2011
Title	JOSEPH GIOVANAZZI v. ADAM TORRES, ET AL.		

Present: The Honorable	A. HOWARD MATZ, U.S. DISTRICT JUDGE
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Stephen Montes

Not Reported

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys **NOT** Present for Plaintiffs:Attorneys **NOT** Present for Defendants:

Proceedings: IN CHAMBERS (No Proceedings Held)

This case is before the Court on the unopposed Motion to Dismiss for Failure to State a Claim, filed by Defendants Michael Dacquist and Linda Schuette (collectively "Defendants"). Schuette is a court-appointed bankruptcy trustee who was granted title to a condominium that Plaintiff Joseph Giovanazzi claims he owns. Dacquist was Schuette's attorney in the bankruptcy proceeding. Plaintiff brought this *Bivens* action against Dacquist, Schuette, and various federal court employees and judicial officers, alleging Fifth Amendment denial of due process and Fourth Amendment unreasonable search and seizure.

Defendants Dacquist and Schuette move to dismiss this case for the following reasons:

- (1) This Court lacks subject matter jurisdiction under *Barton v. Barbour*, 104 U.S. 126 (1881), and its progeny. Under the *Barton* doctrine, "a party must first obtain leave of the bankruptcy court before it initiates an action in another forum against a bankruptcy trustee or other officer appointed by the bankruptcy court for acts done in the officer's official capacity." *In re Crown Vantage, Inc.*, 421 F.3d 963, 970 (9th Cir. 2005). No such leave was obtained.
- (2) Defendants have quasi-judicial immunity for acts committed in furtherance of Schuette's duties as a bankruptcy trustee.
- (3) This action is barred by collateral estoppel because the issues raised against

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Defendants in this action are identical to issues that were already decided in two previous actions, one of which was before this Court. *See Giovanazzi v. Schuette, et al.*, CV 09-0496 AHM (PLAx); *In re Betsy Warren Lebbos*, BK 06-22225-D-7 (E.D. Cal.).

- (4) Plaintiff has pled insufficient facts to give rise to a legally cognizable claim.

The motion is unopposed. “The failure to file any required paper, or the failure to file it within the deadline, may be deemed consent to the granting or denial of the motion.” Local Rule 7-12. Moreover, on its face the motion appears to be meritorious and raises issues that could not be cured by amendment.

Accordingly, the Court GRANTS the motion.¹ Defendants Dacquist and Shuette are dismissed from this action with prejudice.

No hearing is necessary. Fed. R. Civ. P. 78; L.R. 7-15.

Initials of Preparer : _____
SMO

¹ Dkt. No. 16.